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SENATE BILL 759

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO COMMUTER RAIL; GRANTING POWERS AND DUTIES TO THE DEPARTMENT OF TRANSPORTATION; PROVIDING FOR THE NEGOTIATION OF AGREEMENTS WITH OTHER STATES TO FACILITATE COMMUTER RAIL TRANSPORTATION; CREATING THE COMMUTER RAIL ENTERPRISE FUND; PROVIDING FOR USE OF APPROPRIATIONS; CREATING AN EXEMPTION TO THE PROCUREMENT CODE; PROVIDING FOR EMINENT DOMAIN; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Commuter Rail Act".

Section 2. [NEW MATERIAL] PURPOSE OF ACT.--It is the purpose of the Commuter Rail Act to give the department of transportation all functions and powers necessary to develop a

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1 coordinated program of commuter rail transportation within the
2 state and to authorize the department to negotiate with
3 neighboring states to expand commuter rail service outside of
4 the state.

5 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
6 Commuter Rail Act:

7 A. "commuter rail system" means a system of
8 railroad transportation, and any expansion of that system,
9 designated and controlled by the department for the
10 transportation of persons, including tracks, rights of way,
11 easements, equipment, communication and transportation
12 structures, terminals, facilities and other real property
13 owned, purchased or otherwise acquired by the department,
14 either alone or in cooperation with other governmental entities
15 or other persons; and

16 B. "department" means the department of
17 transportation.

18 Section 4. [NEW MATERIAL] DEPARTMENT--POWERS AND DUTIES--
19 OWNERSHIP AND OPERATION OF COMMUTER RAIL SYSTEM--AGREEMENTS--
20 INTERSTATE COMPACT--SALE AND LEASE OF PROPERTY--ESTABLISHMENT
21 AND COLLECTION OF FARES.--

22 A. In addition to the power granted to the
23 department in the Public Mass Transportation Act, the
24 department may plan, design, construct, maintain, own, operate,
25 equip, manage and supervise a commuter rail system.

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1 B. In exercising the authority granted in
2 Subsection A of this section, the department may enter into
3 agreements with:

4 (1) a bureau, department or agency of the
5 federal government;

6 (2) an Indian nation, tribe or pueblo;

7 (3) another state, subject to the provisions
8 of Subsection C of this section;

9 (4) a bureau, department or agency of this
10 state;

11 (5) a municipality, county, school district or
12 other political subdivision of this state; or

13 (6) any person.

14 C. An agreement between the department and another
15 state pursuant to the Commuter Rail Act shall be negotiated as
16 an agreement or compact between this state and the other state
17 and shall not become effective until ratified by the New Mexico
18 legislature.

19 D. The department may sell, lease or grant
20 easements or rights of way or other property interests over or
21 otherwise dispose of real or personal property directly related
22 to a commuter rail system, for reasonable consideration, to a
23 state or local government entity within this state or to a
24 person. Money received from the disposition of real or
25 personal property pursuant to this subsection shall be

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1 deposited in the commuter rail enterprise fund.

2 E. The department shall determine, charge and
3 collect fares and set schedules and all other terms and
4 conditions of the operation of a commuter rail system. Money
5 from the collection of fares shall be deposited in the commuter
6 rail enterprise fund.

7 Section 5. [NEW MATERIAL] COMMUTER RAIL ENTERPRISE FUND--
8 CREATED--PURPOSE.--

9 A. The "commuter rail enterprise fund" is created
10 in the state treasury and shall be administered by the
11 department. The fund shall consist of money from commuter rail
12 system fares, appropriations, gifts, grants, donations and
13 bequests and from other sources distributed to the fund.
14 Earnings on investment of the fund shall be credited to the
15 fund. Balances in the fund at the end of any fiscal year shall
16 not revert to another fund and shall remain in the commuter
17 rail enterprise fund for the purposes authorized in this
18 section. Disbursements from the fund shall be by warrant of
19 the secretary of finance and administration upon vouchers
20 signed by the secretary of transportation or the secretary's
21 authorized representative.

22 B. Money in the commuter rail enterprise fund is
23 appropriated to the department to be used solely to effectuate
24 the purposes of the Commuter Rail Act, including paying the
25 costs of:

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1 (1) planning, design, construction,
2 maintenance, ownership, operation, management and supervision
3 of a commuter rail system; and

4 (2) acquisition of real and personal property
5 interests, facilities and equipment for a commuter rail system.

6 Section 6. [NEW MATERIAL] USE OF APPROPRIATED FUNDS.--The
7 department may expend any portion of funds appropriated to it
8 pursuant to the Commuter Rail Act as it deems necessary to
9 effectuate the purposes of that act.

10 Section 7. [NEW MATERIAL] PROCUREMENT.--The provisions of
11 the Procurement Code do not apply to an acquisition of goods,
12 services, construction or professional services by the
13 department pursuant to the Commuter Rail Act if the department
14 has promulgated a procurement rule for the Commuter Rail Act.

15 Section 8. [NEW MATERIAL] ACQUISITION OF PROPERTY FOR
16 COMMUTER RAIL SYSTEM--POWER OF EMINENT DOMAIN.--The department
17 may:

18 A. acquire property by purchase, lease, exchange,
19 donation, gift, bequest, devise or eminent domain for the
20 purpose of construction and operation of a commuter rail
21 system; and

22 B. negotiate for the acquisition of property from
23 any person, governmental entity or Indian nation, tribe or
24 pueblo for the construction and operation of a commuter rail
25 system.

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1 Section 9. [NEW MATERIAL] LIBERAL CONSTRUCTION.--In order
2 to accomplish its purpose, the Commuter Rail Act shall be
3 liberally construed.

4 Section 10. Section 13-1-98 NMSA 1978 (being Laws 1984,
5 Chapter 65, Section 71, as amended by Laws 2005, Chapter 23,
6 Section 2 and by Laws 2005, Chapter 317, Section 2 and by Laws
7 2005, Chapter 318, Section 1 and also by Laws 2005, Chapter
8 334, Section 8) is amended to read:

9 "13-1-98. EXEMPTIONS FROM THE PROCUREMENT CODE.--The
10 provisions of the Procurement Code shall not apply to:

11 A. procurement of items of tangible personal
12 property or services by a state agency or a local public body
13 from a state agency, a local public body or external
14 procurement unit except as otherwise provided in Sections
15 13-1-135 through 13-1-137 NMSA 1978;

16 B. procurement of tangible personal property or
17 services for the governor's mansion and grounds;

18 C. printing and duplicating contracts involving
19 materials that are required to be filed in connection with
20 proceedings before administrative agencies or state or federal
21 courts;

22 D. purchases of publicly provided or publicly
23 regulated gas, electricity, water, sewer and refuse collection
24 services;

25 E. purchases of books and periodicals from the

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1 publishers or copyright holders [~~thereof~~];

2 F. travel or shipping by common carrier or by
3 private conveyance or to meals and lodging;

4 G. purchase of livestock at auction rings or to the
5 procurement of animals to be used for research and
6 experimentation or exhibit;

7 H. contracts with businesses for public school
8 transportation services;

9 I. procurement of tangible personal property or
10 services, as defined by Sections 13-1-87 and 13-1-93 NMSA 1978,
11 by the corrections industries division of the corrections
12 department pursuant to rules adopted by the corrections
13 industries commission, which shall be reviewed by the
14 purchasing division of the general services department prior to
15 adoption;

16 J. minor purchases not exceeding five thousand
17 dollars (\$5,000) consisting of magazine subscriptions,
18 conference registration fees and other similar purchases where
19 prepayments are required;

20 K. municipalities having adopted home rule charters
21 and having enacted their own purchasing ordinances;

22 L. the issuance, sale and delivery of public
23 securities pursuant to the applicable authorizing statute, with
24 the exception of bond attorneys and general financial
25 consultants;

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1 M. contracts entered into by a local public body
2 with a private independent contractor for the operation, or
3 provision and operation, of a jail pursuant to Sections
4 33-3-26 and 33-3-27 NMSA 1978;

5 N. contracts for maintenance of grounds and
6 facilities at highway rest stops and other employment
7 opportunities, excluding those intended for the direct care and
8 support of persons with handicaps, entered into by state
9 agencies with private, nonprofit, independent contractors who
10 provide services to persons with handicaps;

11 O. contracts and expenditures for services or items
12 of tangible personal property to be paid or compensated by
13 money or other property transferred to New Mexico law
14 enforcement agencies by the United States department of justice
15 drug enforcement administration;

16 P. contracts for retirement and other benefits
17 pursuant to Sections 22-11-47 through 22-11-52 NMSA 1978;

18 Q. contracts with professional entertainers;

19 R. contracts and expenditures for litigation
20 expenses in connection with proceedings before administrative
21 agencies or state or federal courts, including experts,
22 mediators, court reporters, process servers and witness fees,
23 but not including attorney contracts;

24 S. contracts for service relating to the design,
25 engineering, financing, construction and acquisition of public

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1 improvements undertaken in improvement districts pursuant to
2 Subsection L of Section 3-33-14.1 NMSA 1978 and in county
3 improvement districts pursuant to Subsection L of Section
4 4-55A-12.1 NMSA 1978;

5 T. works of art for museums or for display in
6 public buildings or places;

7 U. contracts entered into by a local public body
8 with a person, firm, organization, corporation or association
9 or a state educational institution named in Article 12, Section
10 11 of the constitution of New Mexico for the operation and
11 maintenance of a hospital pursuant to Chapter 3, Article 44
12 NMSA 1978, lease or operation of a county hospital pursuant to
13 the Hospital Funding Act or operation and maintenance of a
14 hospital pursuant to the Special Hospital District Act;

15 V. purchases of advertising in all media, including
16 radio, television, print and electronic;

17 W. purchases of promotional goods intended for
18 resale by the tourism department;

19 X. procurement by or through the public education
20 department from the federal department of education relating to
21 parent training and information centers designed to increase
22 parent participation, projects and initiatives designed to
23 improve outcomes for students with disabilities and other
24 projects and initiatives relating to the administration of
25 improvement strategy programs pursuant to the federal

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1 Individuals with Disabilities Education Act; provided that the
2 exemption applies only to procurement of services not to exceed
3 two hundred thousand dollars (\$200,000);

4 Y. procurement of services from community
5 rehabilitation programs or qualified individuals pursuant to
6 the State Use Act; ~~and~~

7 Z. purchases of products or services for eligible
8 persons with disabilities pursuant to the federal
9 Rehabilitation Act of 1973;

10 ~~[Y-]~~ AA. procurement of an agreement, pursuant to
11 Section 9-7-6.5 NMSA 1978, to operate Fort Bayard medical
12 center or to provide and operate in Grant county a replacement
13 facility for Fort Bayard medical center;

14 ~~[Y-]~~ BB. contracts for investment advisory
15 services, investment management services or other investment-
16 related services entered into by the ~~[education]~~ educational
17 retirement board, the state investment officer or the
18 retirement board created pursuant to the Public Employees
19 Retirement Act; and

20 CC. the acquisition of goods, services,
21 construction or professional services by the department of
22 transportation pursuant to the Commuter Rail Act."

23 Section 11. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2007.